

IN THE COURT OF APPEAL OF NEW ZEALAND

C.A. 126/84 *np*

THE QUEEN

v.

KENNETH NEIL COCHRANE

Coram: Richardson J. (presiding)
McMullin J.
Somers J.

Hearing: 10 August 1984

Counsel: D.G. Dewar for Applicant
W.R. Flaus for Crown

Judgment: 10 August 1984 *plus 5y*

JUDGMENT OF THE COURT DELIVERED BY SOMERS J. *29, 30*

This is an application by Kenneth Neil Cochrane for leave to appeal against a sentence of five years' imprisonment imposed on him in the High Court at Auckland on 31 May 1984 on a charge of rape to which a jury had found him guilty. He claims the sentence is excessive.

Cochrane is 17 years of age - he will be 18 in October. On 3 December 1983 some time after midnight he went to a house occupied by the complainant, a 44 year old woman, and said he wanted to speak to a young girl who lived there. He was intoxicated and difficult. He searched for the girl, intruded into an elderly woman's room, and eventually turned on the complainant saying that she would do. He grabbed her by the hair, threatened that if she made a noise he would

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smash her head in, and proceeded to strip her of a tracksuit which she was wearing and raped her. The complainant acted very sensibly and eventually was able to persuade Cochrane that she should leave the room. She went to a house next door and telephoned the police. They came and found him lying naked, asleep on the bed.

Cochrane has four relatively minor previous convictions none of which suggests the possibility of such an offence as this. His good probation officer's report describes him as a man with a low self esteem and mentions that his employer regarded him as basically a good person. On his behalf Mr Dewar submitted that the sentence was excessive having regard to his youth, to the liquor he had taken and the confused state he was evidently in, to the extent that no physical harm was caused the complainant and to his conduct after the event which suggested lack of awareness of the seriousness of that which he had done. Mr Dewar stressed that the conduct was entirely out of character.

The sentence on this young man was undoubtedly a hard one but there were present some aggravating features. Thus the complainant was unknown to Cochrane, the rape occurred in her home and at night and it was accompanied with threats of violence and some indecency. An important feature of the case is that the sentencing Judge presided over the trial of the applicant and had a great advantage in his ability to

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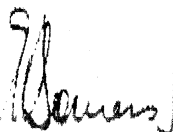
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assess the character of the applicant, his culpability and the harm caused to the complainant.

All in all, while as we have said the sentence was a hard one, we think it was within the Judge's discretion.

Leave to appeal is refused.



Solicitors:

MacAlister Mazengarb Protheroe & Co., Lower Hutt, for
Applicant

Crown Law Office, Wellington, for Crown